



Office of the Attorney General  
State of Texas

DAN MORALES  
ATTORNEY GENERAL

November 25, 1998

Ms. Judy McAdams  
Victoria County Auditor  
115 N. Bridge, Room 122  
Victoria, Texas 77901

OR98-2873

Dear Ms. McAdams:

You ask whether certain information is subject to required public disclosure under chapter 552 of the Government Code. Your request was assigned ID# 120036.

The Victoria County Auditor's Office (the "county") received a request for "a complete inventory of all equipment currently held in the District Attorney's office." You relate that your office maintains records of this equipment in "two sections . . . regular equipment and sensitive equipment" and that you have or will release the "regular" equipment inventory. You seek to withhold the "sensitive" equipment inventory from public disclosure, asserting section 552.108 of the Government Code. You have submitted a copy of the responsive information. We have considered the exception you claim and have reviewed the documents at issue.

The request seeks to identify equipment purchased and maintained by the county and used by public officials. There is a legitimate public interest in the expenditure of public funds. *See* Govt. Code § 522.022(3); Open Records Decision Nos. 541 at 1-2 (1990), 520 at 5 (1989), 518 at 7 (1989), 233 at 2 (1980). Similarly, there is a legitimate public interest in how public officials conduct official business. Open Records Decision Nos. 518 at 4 (1989), 506 at 4 (1988). The requested information should ordinarily be available to the public. Open Records Decision No. 636 (1995). You argue that this information is "confidential under section 552.108."

We first note that no information may be considered confidential by application of section 552.108 of the Government Code. That section provides a permissive exception to the disclosure requirements of the Open Records Act, and reads as follows:

Sec. 552.108. Exception: Certain Law Enforcement and Prosecutorial Information.

(a) Information held by a law enforcement agency or prosecutor that deals with the detection, investigation, or prosecution of crime is excepted from the requirements of Section 552.021 if:

(1) release of the information would interfere with the detection, investigation, or prosecution of crime;

(2) it is information that deals with the detection, investigation, or prosecution of crime only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) it is information that:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(b) An internal record or notation of a law enforcement agency or prosecutor that is maintained for internal use in matters relating to law enforcement or prosecution is excepted from the requirements of Section 552.021 if:

(1) release of the internal record or notation would interfere with law enforcement or prosecution;

(2) the internal record or notation relates to law enforcement only in relation to an investigation that did not result in conviction or deferred adjudication; or

(3) the internal record or notation:

(A) is prepared by an attorney representing the state in anticipation of or in the course of preparing for criminal litigation; or

(B) reflects the mental impressions or legal reasoning of an attorney representing the state.

(c) This section does not except from the requirements of Section 552.021 information that is basic information about an arrested person, an arrest, or a crime.

This statute is designed to protect law enforcement interests. *See* Open Records Decision No. 252 (1980). Section 552.108(a) excepts information related to the investigation of specific crimes; this provision is not relevant to the subject information. Section 552.108(b) excepts from disclosure certain internal records and notations of law enforcement agencies.

Open Records Decision No. 531 at 2 (1989). As you raise section 552.108 without reference to a specific subsection, we construe your argument to include all pertinent subsections. Section 552.108(b)(1) is relevant to the subject information. When section 552.108(b) is claimed, the agency claiming it must reasonably explain, if the information does not supply the explanation on its face, how releasing the information would unduly interfere with law enforcement. Open Records Decision No. 434 at 2-3 (1986).

This office has stated that under the statutory predecessor to section 552.108(b), a governmental body may withhold information that would reveal law enforcement techniques. *See, e.g.*, Open Records Decision Nos. 531 (1989) (release of detailed use of force guidelines would unduly interfere with law enforcement), 456 (1987) (release of forms containing information regarding location of off-duty police officers in advance would unduly interfere with law enforcement), 413 (1984) (release of sketch showing security measures to be used at next execution would unduly interfere with law enforcement), 409 (1984) (if information regarding certain burglaries exhibit a pattern that reveals investigative techniques, information is excepted under Government Code § 552.108), 341 (1982) (release of certain information from Department of Public Safety would unduly interfere with law enforcement because release would hamper departmental efforts to detect forgeries of drivers' licenses), 252 (1980) (Gov. Code § 552.108 is designed to protect investigative techniques and procedures used in law enforcement). Our offices have held that disclosure of specific operations or specialized equipment directly related to investigation or detection of crime, (specifically the description and exact costs and descriptions of electronic surveillance equipment and equipment designed for clandestine operation) may be excepted from public disclosure under this section of Government Code. Open Records Decision No. 143 (1976).

To claim this exception, however, a governmental body must meet its burden of explaining, if the requested information does not supply the explanation on its face, how and why release of the requested information would interfere with law enforcement and crime prevention. Open Records Decision Nos. 562 at 10 (1990). Further, generally-known policies and techniques may not be withheld under section 552.108. *See, e.g.*, Open Records Decision Nos. 531 at 2-3 (1989) (Penal Code provisions, common-law rules, and constitutional limitations on use of force are not protected under Govt. Code § 552.108), 252 at 3 (1980) (governmental body did not meet burden because it did not indicate why investigative procedures and techniques requested were any different from those commonly known).

We have reviewed the submitted "sensitive equipment" list. We find that the list includes items typical of those generally known to be used by law enforcement agencies. Revealing this information would not constitute disclosure of specific operations or specialized equipment directly related to investigation or detection of crime. However, some of the items on the list may be considered to designate specialized equipment designed for clandestine operation. Disclosure of those items may reveal the description and exact cost of such equipment. We have marked (\*) line numbers 1, 17, 19, 20, 26, 27, 28, 31, 32, 33, 34 and 35 as items that may be excepted from public disclosure by section 552.108. These items may be redacted from the subject information; the remainder must be released.

While section 552.108 does not prohibit the disclosure of information that may be excepted by that statute, the selective disclosure of such information is prohibited. As Section 552.007 of the Government Code states:

(a) This chapter does not prohibit a governmental body or its officer for public information from voluntarily making part of all of its information available to the public, unless the disclosure is expressly prohibited by law or the information is confidential under law.

(b) Public information made available under Subsection (a) must be made available to any person.

Thus, if any of the information that the county now seeks to withhold has previously been released to a member of the public, it must also be released to this requestor. *See* Open Records Decision No. 400 (1983). For example, release to a member of the public of a check register showing the amount paid and description of a listed item would constitute a waiver of section 552.108 with regard to that information.

We are resolving this matter with an informal letter ruling rather than with a published open records decision. This ruling is limited to the particular records at issue under the facts presented to us in this request and should not be relied upon as a previous determination regarding any other records. If you have questions about this ruling, please contact our office.

Yours very truly,



Michael J. Burns  
Assistant Attorney General  
Open Records Division

MJB/ch

Ref: ID# 120036

Enclosures: Marked documents

cc: Ms. Julie Bauknight  
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(w/o enclosures)